



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C. 20460**

**OFFICE OF PREVENTION, PESTICIDES  
AND TOXIC SUBSTANCES**

Bryan Arroyo  
Acting Assistant Director for Endangered Species  
U.S. Fish and Wildlife Service  
1849 C Street, NW  
Washington, D.C. 20204

Jim Lecky, Director  
Office of Protected Resources  
National Marine Fisheries Service  
13<sup>th</sup> Floor 1315 East-West Highway  
Silver Spring, MD 20910

Dear Mr. Arroyo and Mr. Lecky:

The Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency (EPA) respectfully requests the initiation of Endangered Species Act (ESA) section 7(a)(2) informal consultation. This consultation request addresses 6 listed species in the Chesapeake Bay watershed and 1 species in the Alabama River watershed and pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which contain the active ingredient atrazine. The attached assessments and effects determinations (one relating to atrazine's potential effects on the loggerhead turtle, leatherback turtle, green turtle, Kemp's ridley turtle, shortnose sturgeon, and dwarf wedge mussel, in the Chesapeake Bay Watershed, and the other relating to atrazine's potential effects on the Alabama sturgeon in the Alabama River watershed) were conducted consistent with the scientific procedures outlined in the Agency's Overview Document.<sup>1</sup> Our assessments, resulted in a determination that atrazine is not likely to adversely affect, directly or indirectly, any of the 7 subject species in the described geographic areas. Critical Habitat has not been designated by the Services for these species.

As you know, the Overview Document was reviewed and approved by both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services). Having carefully reviewed the Overview Document, the Services concluded that EPA's ecological risk assessment process "will produce effects determinations that reliably assess the effects of pesticides on endangered and threatened species [] and critical habitat pursuant to Section 7 of the [ESA] and [its] implementing regulations."<sup>2</sup> Under the counterpart consultation regulations at 50 CFR 402.45, EPA is not required to engage in further consultation with the Services regarding these determinations. However, on August 24, 2006, the U.S. District Court for the Western District of Washington issued an order setting aside the "NLAA" provisions of the counterpart consultation regulations. EPA does not agree with the court's decision and intends to work with the Services and the Department of Justice to determine the scope and

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<sup>1</sup> *Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs, Environmental Protection Agency (January 2004)*

<sup>2</sup> (January 26, 2004 letter from the Services to Susan B. Hazen, Principal Deputy Assistant Administrator, OPPTS, EPA, p. 1).

applicability of the decision. Although the Federal Government has not yet determined whether the decision has enjoined the counterpart regulations in the states where these species are located, we believe the prudent course pending our review with the Department of Justice is to initiate informal consultation, for purposes of the attached assessments and effects determinations only, and without conceding the necessity to initiate informal consultation in this context. I therefore respectfully request your written concurrence on these determinations pursuant to the Services' informal consultation regulations in 50 CFR Part 402, Subpart B.

Please let me know if you have any questions regarding this request or the materials I am submitting relevant to consultation.

Enclosures

Sincerely,

*/original signed by Arthur-Jean B. Williams/  
August 31, 2006*

Arthur-Jean B. Williams, Associate Director  
Environmental Fate and Effects Division Office of  
Pesticide Programs (7507P)